

UNITED STATES OF AMERICA,)
)
) CRIMINAL ACTION NO.
 v.) 2:16cr542-MHT
) (WO)
 DARRIUS MARCEL MASTIN)

This cause is before the court on the motion to continue made by defendant Darrius Marcel Mastin on November 13, 2017. For the reasons set forth below, the court finds that jury selection and trial, now set for December 4, 2017, should be continued pursuant to 18 U.S.C. § 3161(h) (7) .

While the granting of a continuance is left to the sound discretion of the trial judge, *United States v. Stitzer*, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an

offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes from the 70-day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(7)(A). In granting such a continuance, the court may consider, among other factors, whether the failure to grant the continuance would "result in a miscarriage of justice," § 3161(h)(7)(B)(i), or "would deny counsel for the defendant ... reasonable time necessary for effective preparation, taking into account the exercise of due diligence." § 3161(h)(7)(B)(iv).

The court concludes that, in this case, the ends of justice served by granting a continuance outweigh the interest of the public and Mastin in a speedy trial. Mastin was appointed new counsel on November 13, 2017,

after his previous counsel withdrew due to a conflict of interest. Prior to withdrawing, previous counsel filed a motion to suppress, which remains pending. Mastin's new defense counsel has made arrangements to obtain discovery and all other relevant materials, but needs time to review those materials, obtain any outstanding discovery, and reply in support of Mastin's motion to suppress. In light of the limited time defense counsel has had to orient himself with the case and the discovery materials, as well as the time needed reply in support of and resolve the motion to suppress, the current December 4 trial date does not provide enough time for defense counsel to prepare for jury selection and trial. A continuance is therefore warranted and necessary.

The government does not object to a continuance.

Accordingly, it is ORDERED as follows:

(1) The motion for continuance of defendant Darrius Marcel Mastin (doc. no. 68) is granted.

(2) The jury selection and trial, now set for December 4, 2017, are reset for January 29, 2018, at 10:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson Jr. United States Courthouse Complex, One Church Street, Montgomery, Alabama.

DONE, this the 20th day of November, 2017.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE